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UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

JAMES S. COLEMAN,	:	
Petitioner	:	
	:	
v.	:	Civil No. 1:CV-01-0267
	:	(Caldwell, J.) ✓
SUSAN GERLINSKI, Warden,	:	(Mannion, M.J.)
Respondent	:	

RESPONDENT'S BRIEF IN RESPONSE TO PETITIONER'S  
OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

This is a habeas corpus action by James S. Coleman alleging that the Federal Bureau of Prisons ("BOP") has miscalculated his sentence computation. In opposition to the petition, the respondent provided exhibits and arguments to establish that Coleman's sentence was computed in accordance with BOP policy as well as federal law.

On December 27, 2001 the Magistrate Judge issued a Report recommending that the habeas petition be denied. On January 5, 2001, Coleman filed objections to the Report. Respondent now files this response.

Argument

A party dissatisfied with a report and recommendation of a magistrate judge may "file specific, written objections" to the report within ten days of service. Fed. R. Civ. P. 72(b). The

district court then makes a de novo determination of those portions of the report to which a proper objection has been lodged. Id. Absent a timely objection, the court need only be satisfied that there is no clear error on the face of the report. Campbell v. United States District Court, 501 F.2d 196, 206 (9th Cir. 1974). See also Goney v. Clark, 749 F.2d 5, 7 (3d Cir. 1984).

Coleman filed his objections to the Magistrate Judge's Report and Recommendation ("Report"). In those objections, Coleman claims that the Report erred in not finding that the Bureau of Prisons violated his due process rights when they re-computed his sentence and took away good time credits.

Clearly, Coleman's objections are unfounded. As the Magistrate Judge's Report observed, Coleman's first sentence in 1981 resulted in a sentence of 5 to 15 years. In November 1996 when Coleman was paroled, 3,439 days remained on his sentence. Coleman remained on parole supervision until he was convicted of attempted burglary on April 8, 1991. Under the decision in U.S. Parole Commissioner v. Noble, 711 A.2d 85 (D.C. 1998), the time Coleman spent on parole supervision was not credited against his original sentence as a result of his parole violation. Therefore, when Coleman began to serve his parole violator term on June 11, 1991, he owed the entire 3,439 days of his original sentence. In addition, 18 months was added as a result of his conviction for Prison Breach.

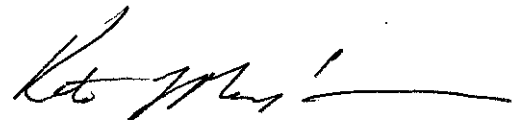
Furthermore, the time that Coleman spent as a fugitive while in escape status was inoperative; thus, he was not entitled to good time credits during this period of time. See Rogers v. Barry, 107 F.3d 923, 1997 WL 71766 (D.C. Cir. 1997) (unpublished disposition). (Report at 4-5.) The BOP merely adjusted Coleman's time to reflect the time he spent as a fugitive and the loss of credit for time spent on parole supervision pursuant to Noble. (Report at 5.) Therefore, Coleman's objection that the Magistrate Judge erred when it found that BOP had correctly computed his sentence is without merit.

#### Conclusion

Accordingly, respondent requests this Court to overrule petitioner's objections and to adopt the December 27, 2001 Report and Recommendation of the Magistrate Judge.

Respectfully submitted,

MARTIN C. CARLSON  
United States Attorney



KATE L. MERSHIMER  
Assistant U.S. Attorney  
SHELLEY L. GRANT  
Paralegal Specialist  
220 Federal Building  
228 Walnut Street  
Post Office Box 11754  
Harrisburg, PA 17108  
717-221-4482

Date: January 22, 2002

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

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v.	: Civil No. 1:CV-01-0267
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee in the Office of the United States Attorney for the Middle District of Pennsylvania and is a person of such age and discretion as to be competent to serve papers.

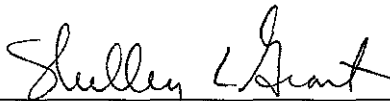
That on January 22, 2002, she served a copy of the attached

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OBJECTIONS TO THE MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

by placing said copy in a postpaid envelope addressed to the person hereinafter named, at the places and addresses stated below, which is the last known addresses, and by depositing said envelope and contents in the United States Mail in Harrisburg, Pennsylvania.

Addressee:

James S. Coleman  
Reg. No. 09229-007  
LSCI Allenwood  
P.O. Box 1000  
White Deer, PA 17887

  
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SHELLEY L. GRANT  
Paralegal Specialist